

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**MISC CIVIL APPLICATION NO. 36 OF 2021  
(Arising from Original Civil Case No. 61 of 2021)**

**RICHARD KALUMUNA MSEMAKWELI..... APPELLANT**

**VERSUS**

**AFRICAN BANKING CORPORATION TANZANIA  
LTD..... 1<sup>ST</sup> RESPONDENT**

**CHRISTIAN STANLEY MUSHEMAKWELI..2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last order: 4/11/2021  
Date of Ruling: 26/11/2021*

**MGONYA, J.**

This is an Application for extension of time to lodge a notice of intention to appeal out of time against the judgement of the High Court of Tanzania at Dar es Salaam, **Hon. Mlyambina, J.** in **Civil Case No. 61/2017 dated 20/11/2020.** The

Application has been moved by a Chamber Summons under **section 11 (1), of the Appellate Jurisdiction Act, Cap. 141 R.E 2019** supported by an Affidavit sworn by the Applicant.

The Application was resisted through the counter affidavit by the 1<sup>st</sup> Respondent herein hence scheduled for hearing. The Applicant and 2<sup>nd</sup> Respondent appeared in person before the Court while the 1<sup>st</sup> Respondent enjoyed the services of Ms. Bupe Kabeta learned counsel.

In the course of determining this Application, I have gone through both parties' pleadings and their respective written submissions as ordered by this Honorable Court. Moreover, in determining this application, I don't intend in any way to reproduce parties' written submissions and instead, I will directly proceed to determine the Application on merit.

From the Chamber Summons, the prayer sought by the Applicant is leave to from this Court to grant him extension of time to give Notice of intension to Appeal against the Judgement of the High Court of Tanzania at Dar es Salaam before Hon. Mlyambina Judge dated 20<sup>th</sup> November 2020.

In this kind of Application, the Court ought to have been acquainted with the good cause as to the delay of the Applicant

to file Notice of Appeal against the decision of the High Court to the Court of Appeal. Referring to the Applicant's Affidavit, the reason of delay can easily be traced in **Paragraph six (6)** of the same. The same states:

***"That the announced judgement was not ease to be understood as it did not give me the chance to comprehend the contents of the same"***

The said paragraph and the entire affidavit encountered a serious objection from the 1<sup>st</sup> Respondent herein for the reason that the good cause in that respect has not been demonstrated by the Applicant herein.

In my perception, **the right to appeal is a Constitutional Right.** It is from the same, I am firm concerned that, if one wants to appeal from a certain decision of the Court, let him proceed judiciously. I am well aware of the law of limitation of time. However as said earlier, the Applicant's reason of his delay to file Notice to appeal to the Court of Appeal has satisfied this Court as the Applicant declared not to have understood the contents of the judgement to settle his mind to Appeal or otherwise.

Further looking at the time from the decision was delivered to the time this Application was filed, it is not an alarming time,

hence reasonable for someone who needs to secure a legal expert to explain the contents of the Judgement.

From the above explanation, **the Application at hand is accordingly granted as prayed. The Applicant is to file his Notice to Appeal within 14 days** from the date of obtaining a copy of this Ruling.

It is so ordered.

I make no order as to costs.



**L. E. MGONYA**  
**JUDGE**  
**26/11/2021**

**Court:** Ruling delivered in chamber in the presence of Applicant in person, Advocate Mr. Kelvin Deogratus for the 1<sup>st</sup> Respondent, Mr. Richard RMA.



**L. E. MGONYA**  
**JUDGE**  
**26/11/2021**